

FILED
MAY 20 2014

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

LAWRENCE ROEDEL,

Petitioner,

vs.

STATE OF MONTANA,

Respondent.

Cause No. CV 14-160-M-DLC-JCL

FINDINGS AND
RECOMMENDATION OF U.S.
MAGISTRATE JUDGE

On May 16, 2014, Petitioner Lawrence Roedel filed this action seeking a writ of error coram nobis. Roedel is a state prisoner proceeding pro se.

Roedel has not paid the filing fee or moved to proceed in forma pauperis, but there is no reason to delay disposition of this matter.

A petition for a writ of error coram nobis must be addressed to the court that imposed the conviction and sentence. “[T]he coram nobis writ allows a court to vacate *its* judgments for errors of fact.” *Hirabayashi v. United States*, 828 F.2d 591, 604 (9th Cir. 1987) (emphasis added); *see also Black’s Law Dictionary* 338 (7th ed. 1999). Roedel was not tried or convicted by this Court. Coram nobis relief is not available. The petition must be dismissed for lack of jurisdiction.

To the extent Roedel can be understood to argue that his petition for writ of habeas corpus should be reopened, *see Fed. R. Civ. P. 60(b)*, reopening is foreclosed. Roedel seeks to present evidence and argue the merits of his claims for

relief against the criminal judgment. Because he has already had an opportunity to do that, the current attempt is, in substance, a second petition under 28 U.S.C. § 2254. *Gonzalez v. Crosby*, 545 U.S. 524, 531 (2005). The Court of Appeals has not authorized its filing. 28 U.S.C. § 2244(b). It must be dismissed for lack of jurisdiction. *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam). A certificate of appealability should be denied. The Court of Appeals has already denied one. Further, there is no doubt whatever about the procedural ruling, *Gonzalez v. Thaler*, __ U.S. __, 132 S. Ct. 641, 648 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Based on the foregoing, the Court enters the following:

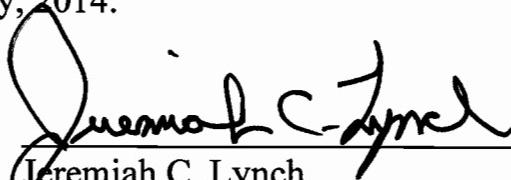
RECOMMENDATION

1. The petition for writ of error coram nobis (Doc. 1) should be DISMISSED for lack of jurisdiction.
2. The Clerk of Court should be directed to enter a judgment of dismissal.
3. The Court should CERTIFY, pursuant to Fed. R. Civ. P. 24, that any appeal from its disposition would not be taken in good faith.
4. To the extent a certificate of appealability is pertinent, it should be DENIED.

Roedel must immediately notify the Court of any change in his mailing address by filing a “Notice of Change of Address.” Failure to do so may result in

denial of this action without notice to him.

DATED this 20th day of May, 2014.



Jeremiah C. Lynch
United States Magistrate Judge